

**AGREEMENT FOR DEPOSIT OF OBLIGATIONS
OTHER THAN RETAINAGE**
18-1-301 through 18-1-304 MCA

This AGREEMENT is made as of [DATE] by and between [CONTRACTOR] (the CONTRACTOR), _____ (the FINANCIAL INSTITUTION), and the STATE OF MONTANA, acting through its DIRECTOR, DEPARTMENT OF ADMINISTRATION (the OWNER).

WHEREAS, the Contractor and the Owner have entered into a Contract for the construction of the [PROJECT NAME AND NUMBER] (the PROJECT), the Contractor pledges securities (obligations) in a form specified in 18-1-301 Montana Code Annotated (MCA) to be held by the Financial Institution in lieu of retainage by the Owner.

WHEREAS, the Owner will establish the amount which would otherwise be held as retainage and the Contractor has selected the form of security and designated the Financial Institution where the obligations will be deposited in an amount equal to that of the estimated retainage.

WHEREAS, the Financial Institution will provide for custodial care and servicing of any and all obligations deposited subject to the restrictions contained in this Agreement.

NOW THEREFORE, the parties agree as follows:

1. Denomination. All securities shall be held in the dual name of the Contractor and the Owner (or in the name of the Owner only), shall be signed or executed by the Contractor and made available to the Owner, and shall bear the tax identification number of the Contractor.
2. Interest, Income and Penalty. All interest and income generated by the securities shall belong to the Contractor with disbursements made as established by the Financial Institution in accordance with the type of securities selected. All penalties, costs and fees shall be the responsibility of the Contractor.
3. Requirements.
 - a. Restriction. The Financial Institution shall permit no funds or securities to be delivered, paid out, transferred or moved without direct written instructions from the Owner except as expressly authorized hereinafter. The Financial Institution is authorized, without prior written consent to:
(1) distribute on a current basis all interest, cash dividend and other income received on

securities held; (2) make withdrawals of any commissions, markups, service charges or any other fees or charges assessed by the Financial Institution. However, all withdrawals shall be either deducted from the interest, dividends or other income or shall be billed to the Contractor. In no instance shall the Financial Institution deduct fees or charges from that portion identified as that which otherwise would be held as retainage by the Owner. The Contractor may choose to pay any fees, costs, or penalties directly in a manner established by the Financial Institution rather than have them deducted from the earnings.

b. **Duplicate Statements and Confirmations.** The Financial Institution shall provide the Owner with duplicate monthly and year-end statements and purchase and sale confirmations of all transactions. The Owner acknowledges that values placed on security positions (with regard to bonds, treasure bills and/or treasury notes) do not constitute a guarantee or representation of the liquidation value and that such statements are general guidelines.

4. **Direction Authority.** The Owner and the Contractor agree, consent and understand that the Contractor shall be exclusively entitled and authorized to direct the objectives of the securities within the statutory methods permitted by 18-1-301 MCA. The parties further understand and agree that the Contractor shall be liable for all fees, costs and penalties and any transactions made therein. This authority shall extend only insofar as the Contractor is not held to be in default of the construction Contract by the Owner.

5. **Balance.** The Owner and Contractor agree, consent and understand that the securities or balance shall not drop below the agreed upon amount which would otherwise have been held as retainage by the Owner. In the event this occurs, the Owner may withhold retainage from all future payments made under the Construction Contract.

6. **Contractor Default.**

a. **Changes.** Following receipt of written notice from the Owner of a default on the construction Contract by the Contractor, the Financial Institution shall not effect any changes to the securities held without the express written consent of the Owner.

b. **Delivery of Assets.** Following receipt of written notice to the Financial Institution from the Owner of default by the Contractor AND/OR upon written demand by the Owner, the Financial Institution shall deliver to the Owner the amount of the securities held, or any portion thereof, which shall be identified with particularity in the demand. The amount delivered to the Owner shall be that which is identified as retainage under the stipulations of the construction Contract whereas all interest, cash dividend and other income received on securities shall be delivered to the Contractor, unless directed otherwise by the written demand of the Owner.

c. The Financial Institution shall not make any withdrawals of any commissions, markups, service charges or any other fees or charges assessed by the Financial Institution from other than interest, dividends or other income. If management fees, costs, or penalties exceed the income

generated by the securities, such costs shall be billed to and be the responsibility of the Contractor and not the Owner.

7. Liquidation of Securities.

a. The Financial Institution shall disburse, transfer or pay over the securities held in accordance with joint written instructions signed by both the Contractor and the Owner.

b. If the securities mature and there are no joint written instructions issued for liquidation, the securities shall be held without any automatic renewals unless so directed by the Contractor pursuant to 4. above. Specifying the renewal, costs or fees associated with any renewal, early withdrawal or other transaction shall be the responsibility of the Contractor. The Financial Institution shall not be responsible for notifying the Contractor nor the Owner of the maturation of any securities. Monitoring the maturation of all securities shall be wholly the responsibility of the Contractor.

c. The Contractor shall prepare for the Owner's signature written authorization addressed to the Financial Institution and shall identify the amounts of funds or securities to be disbursed upon completion of the construction Contract. The Financial Institution shall not make any disbursements other than interest, cash dividend or other income received on securities held in without the express, written authorization of the Owner.

d. The Financial Institution shall be held liable to the Owner for disbursements to the Contractor of other than interest, cash dividend or other income received on securities held without the express, written authorization of the Owner.

e. The Owner shall indemnify and hold harmless the Financial Institution, its affiliates, agents, officers, and employees against the Contractor for compliance with the Owner's express written instructions.

8. Termination. The Contractor and the Owner agree that the securities shall remain subject to this Agreement until such time that the Financial Institution has been notified in writing by the Owner that this Agreement has been breached, expired, or otherwise terminated. The Contractor cannot terminate this Agreement by any means.

9. Transfer. The Financial Institution shall have right to terminate its obligations under this Agreement by giving all parties hereto thirty (30) days prior written notice of its intent to transfer the securities to another Financial Institution, as directed by the Contractor, which shall also agree, be subject to and signee to this Agreement at the time of the transfer.

10. Successors and Assigns. The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors and assigns. Addendums, alterations or modifications of this Agreement, including transfers, successors and assigns, shall be

accomplished only by written instrument signed by all parties hereto.

11. Jurisdiction. The Agreement shall be governed by, subject to and construed in accordance with the laws of the State of Montana. In the event of litigation or arbitration concerning this Agreement, venue shall be the First Judicial District in and for the County of Lewis and Clark, Montana, and the Contract shall be interpreted according to the laws of Montana.

12. Prior Agreements. The parties hereto agree that this Agreement supercedes any prior agreements, whether verbal or written between them collectively or any two of the parties regarding securities, obligations or retainage.

13. Written Notices. Any and all notices or other communication required or permitted to be given under this Agreement shall be in writing and addressed per the following:

If to the Financial Institution:

If to the Contractor:

If to the Owner:

Any notice or communication shall be deemed to have been received by a party if sent by registered or certified mail (return receipt requested) on the date specified on the return receipt or, if personally delivered, upon the date of such delivery. Changes in address for notice or person receiving notice shall be done by giving notice in the manner as specified in this paragraph.

This AGREEMENT entered into as of the day and year first written above:

Contractor:

(Company & Tax I.D. Number)

(Name & Title)

Owner:

Department of Administration, State of Montana

(Name & Title)

Financial Institution:

(Institution Name)

(Name & Title)